

### REMARKS

The Applicants protest that the Examiner has reversed a previous indication of allowability for Claims 49-51. The Applicants' submit that the Examiner's reversal has placed the Applicants in a compromised position because Claims 7-12, 15-18, and 34-48 were previously canceled for the sole purpose of placing the instant application in condition for allowance. Further, this reversal is based upon an unsound argument that is contrary to USPTO examination guidelines requiring the best references be provided to support an anticipation rejection.<sup>1</sup>

The Examiner now provides another rejection that was not at issue before allowance of Claims 29-51 was indicated.

- I. Claims 49-51 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by United States Patent No. 5,888,511 To Skurkovich et al.<sup>2</sup>

#### **I. Claims 49-51 Are Not Anticipated**

As the Examiner is well aware, a single reference must disclose each limitation of a claim in order for that reference to anticipate the claim. *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984). This criterion is not met with the Skurkovich et al. reference.

As previously argued, Skurkovich et. al lacks any teaching for the administration of antibodies to TNF- $\alpha$ , IL-6 or gamma IFN, either singly or in any combination, to mammals for the treatment of sepsis. As such, Claim 49 or Claim 51 (as they now stand) and the associated dependent claims cannot be anticipated by Skurkovich et. al.

In the present Office Action, the Examiner blatantly admits that Skurkovich et al. does not anticipate the presently claimed embodiment:

... Skurkovich does not specifically recite a composition for use with a mammal having symptoms of sepsis.

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<sup>1</sup> "In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his command." 37 CFR 1.106(b).

<sup>2</sup> Skurkovich et al. was withdrawn for anticipation following Applicants response to Office Action Mailed April 9, 2002 to original Claim 7 which is identical to pending Claim 49. The Applicants protest the Examiner's reasserting a withdrawn reference against the same claim scope.

*Office Action pg 3.* The Examiner relies upon a partial teaching of the Applicants' claimed elements on which to support the present anticipation rejection:

... by teaching compositions of methods for treating AIDS, Skurkovich et al. teaches compositions and methods for treating symptoms of sepsis ...

*Office Action pg 3.* The Examiner's position is contrary to the statutory definition of anticipation as well as judicially mandated direction to the USPTO regarding implementation of 35 USC §102(b). This Examiner is reminded that method claims must be examined based upon all claim terms, especially those directed to the use of a compound.

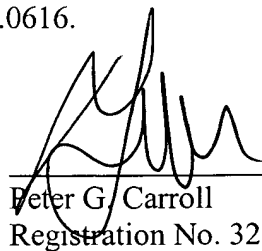
Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have amended Claims 49 and 51 to recite "a plurality of symptoms" wherein "arterial hypotension" is combined with at least one other sepsis symptom. Further, the Applicants have added new Claims 52-57 describing embodiments reciting "sepsis" and "septic shock". *See Applicants' Specification, pg. 5 ln 4-14.* These amendments are made not to acquiesce to the Examiner's argument but only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

The Applicants respectfully request that the Examiner withdraw the present rejection.

**CONCLUSION**

The Applicants believe that the arguments and claim amendments set forth above traverse the Examiner's rejections and, therefore, request that all grounds for rejection be withdrawn for the reasons set above. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned collect at 617.984.0616.

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